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*Attorneys for Filter USA, Inc. and Benjamin Friedlander*

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**IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF UTAH, CENTRAL DIVISION**

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**SKULLCANDY, INC., a Delaware  
corporation,**

**Plaintiff,  
v.**

**FILTER USA, INC., a New York  
corporation, BENJAMIN  
FRIEDLANDER, an individual, both doing  
business as “Filter Pro” on  
www.amazon.com, and JOHN DOES 1-10,**

**Defendants.**

**DEFENDANTS FILTER USA, INC. AND  
BENJAMIN FRIEDLANDER’S  
ANSWER AND AFFIRMATIVE  
DEFENSES**

**Civil Action No. 18-cv-00748-DAK-CMR**

**Judge: Dale A. Kimball**

**Magistrate Judge: Cecilia M. Romero**

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Defendants Filter USA, Inc. (“Filter USA”) and Benjamin Friedlander (“Friedlander”) (hereinafter collectively “Defendants”), by and through their undersigned counsel, STERN & SCHURIN LLP, hereby submit their Answer and Affirmative Defenses as follows:

Defendants do not believe that a response to the introductory paragraph of the Complaint is warranted or required. However, to the extent that a response is warranted or required, Defendants deny all of the allegations in the introductory paragraph of the Complaint.

### **PARTIES**

1. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 1 of the Complaint and, therefore, deny the same.

2. Defendants deny the allegations of Paragraph 2 of the Complaint, except admit that Filter USA is a New York corporation.

3. Defendants deny the allegations of Paragraph 3 of the Complaint.

4. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 4 of the Complaint and, therefore, deny the same.

5. Defendants deny the allegations of Paragraph 5 of the Complaint, except admit that the Court has subject matter jurisdiction over this litigation.

6. Defendants deny the allegations of Paragraph 6 of the Complaint.

7. Defendants deny the allegations of Paragraph 7 of the Complaint.

### **FACTUAL ALLEGATIONS**

8. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 8 of the Complaint and, therefore, deny the same.

9. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 9 of the Complaint and, therefore, deny the same.

10. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 10 of the Complaint and, therefore, deny the same.

11. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 11 of the Complaint and, therefore, deny the same.

12. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 12 of the Complaint and, therefore, deny the same.

13. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 13 of the Complaint and, therefore, deny the same.

14. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 14 of the Complaint and, therefore, deny the same.

15. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 15 of the Complaint and, therefore, deny the same.

16. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 16 of the Complaint and, therefore, deny the same.

17. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 17 of the Complaint and, therefore, deny the same.

18. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 18 of the Complaint and, therefore, deny the same.

19. Defendants deny the allegations of Paragraph 19 of the Complaint.

20. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 20 of the Complaint and, therefore, deny the same.

21. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 21 of the Complaint and, therefore, deny the same.

22. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 22 of the Complaint and, therefore, deny the same.

23. Defendants deny the allegations of Paragraph 23 of the Complaint.

24. Defendants deny the allegations of Paragraph 24 of the Complaint.

25. Defendants deny the allegations of Paragraph 25 of the Complaint.

26. Defendants deny the allegations of Paragraph 26 of the Complaint.

27. Defendants deny the allegations of Paragraph 27 of the Complaint.

28. Defendants deny the allegations of Paragraph 28 of the Complaint.

29. Defendants deny the allegations of Paragraph 29 of the Complaint.

30. Defendants deny the allegations of Paragraph 30 of the Complaint.

31. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 31 of the Complaint and, therefore, deny the same.

32. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 32 of the Complaint and, therefore, deny the same.

33. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 33 of the Complaint and, therefore, deny the same.

34. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 34 of the Complaint and, therefore, deny the same.

35. Defendants deny the allegations of Paragraph 35 of the Complaint.

36. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 36 of the Complaint and, therefore, deny the same.

37. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 37 of the Complaint and, therefore, deny the same.

38. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 38 of the Complaint and, therefore, deny the same.

39. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 39 of the Complaint and, therefore, deny the same.

40. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 40 of the Complaint and, therefore, deny the same.

41. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 41 of the Complaint and, therefore, deny the same.

42. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 42 of the Complaint and, therefore, deny the same.

43. Defendants deny the allegations of Paragraph 43 of the Complaint.

44. Defendants deny the allegations of Paragraph 44 of the Complaint.

45. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 45 of the Complaint and, therefore, deny the same.

46. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 46 of the Complaint and, therefore, deny the same.

47. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 47 of the Complaint and, therefore, deny the same.

48. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 48 of the Complaint and, therefore, deny the same.

49. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 49 of the Complaint and, therefore, deny the same.

50. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 50 of the Complaint and, therefore, deny the same.

51. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 51 of the Complaint and, therefore, deny the same.

52. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 52 of the Complaint and, therefore, deny the same.

53. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 53 of the Complaint and, therefore, deny the same.

54. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 54 of the Complaint and, therefore, deny the same.

55. Defendants deny the allegations of Paragraph 55 of the Complaint.

56. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 56 of the Complaint and, therefore, deny the same.

57. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 57 of the Complaint and, therefore, deny the same.

58. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 58 of the Complaint and, therefore, deny the same.

59. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 59 of the Complaint and, therefore, deny the same.

60. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 60 of the Complaint and, therefore, deny the same.

61. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 61 of the Complaint and, therefore, deny the same.

62. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 62 of the Complaint and, therefore, deny the same.

63. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 63 of the Complaint and, therefore, deny the same.

64. Defendants deny the allegations of Paragraph 64 of the Complaint.

65. Defendants deny the allegations of Paragraph 65 of the Complaint.

66. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 66 of the Complaint and, therefore, deny the same.

67. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 67 of the Complaint and, therefore, deny the same.

68. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 68 of the Complaint and, therefore, deny the same.

69. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 69 of the Complaint and, therefore, deny the same.

70. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 70 of the Complaint and, therefore, deny the same.

71. Defendants deny the allegations of Paragraph 71 of the Complaint.

72. Defendants deny the allegations of Paragraph 72 of the Complaint.

73. Defendants deny the allegations of Paragraph 73 of the Complaint.

74. Defendants deny the allegations of Paragraph 74 of the Complaint.

75. Defendants deny the allegations of Paragraph 75 of the Complaint.

76. Defendants deny the allegations of Paragraph 76 of the Complaint.

77. Defendants deny the allegations of Paragraph 77 of the Complaint.

78. Defendants deny the allegations of Paragraph 78 of the Complaint.
79. Defendants deny the allegations of Paragraph 79 of the Complaint.
80. Defendants deny the allegations of Paragraph 80 of the Complaint.
81. Defendants deny the allegations of Paragraph 81 of the Complaint.
82. Defendants deny the allegations of Paragraph 82 of the Complaint.
83. Defendants deny the allegations of Paragraph 83 of the Complaint.
84. Defendants deny the allegations of Paragraph 84 of the Complaint.
85. Defendants deny the allegations of Paragraph 85 of the Complaint.
86. Defendants deny the allegations of Paragraph 86 of the Complaint.
87. Defendants deny the allegations of Paragraph 87 of the Complaint.
88. Defendants deny the allegations of Paragraph 88 of the Complaint.
89. Defendants deny the allegations of Paragraph 89 of the Complaint.
90. Defendants deny the allegations of Paragraph 90 of the Complaint.
91. Defendants deny the allegations of Paragraph 91 of the Complaint.
92. Defendants deny the allegations of Paragraph 92 of the Complaint.
93. Defendants deny the allegations of Paragraph 93 of the Complaint.
94. Defendants deny the allegations of Paragraph 94 of the Complaint.
95. Defendants deny the allegations of Paragraph 95 of the Complaint.
96. Defendants deny the allegations of Paragraph 96 of the Complaint, except admit that authentic Skullcandy products were shipped to customers in Utah.
97. Defendants deny the allegations of Paragraph 97 of the Complaint.
98. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 98 of the Complaint and, therefore, deny the same.



99. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 99 of the Complaint and, therefore, deny the same.

100. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 100 of the Complaint and, therefore, deny the same.

101. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 101 of the Complaint and, therefore, deny the same.

102. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 102 of the Complaint and, therefore, deny the same.

103. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 103 of the Complaint and, therefore, deny the same.

104. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 104 of the Complaint and, therefore, deny the same.

105. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 105 of the Complaint and, therefore, deny the same.

With regard to the allegations concerning the content of pleadings in the lawsuit *Noco Company v. Filter Pro*, No. 1:18-cv-01158-JG (N.D. Ohio), Defendants do not believe that a response to same is warranted or required. However, to the extent that a response to the allegations concerning the content of pleadings in the lawsuit *Noco Company v. Filter Pro*, No. 1:18-cv-01158-JG (N.D. Ohio) is warranted or required, Defendants deny all such allegations in Paragraph 105 of the Complaint.

106. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 106 of the Complaint and, therefore, deny the same.

107. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 107 of the Complaint and, therefore, deny the same.

108. Defendants deny the allegations of Paragraph 108 of the Complaint.

109. Defendants deny the allegations of Paragraph 109 of the Complaint.

110. Defendants deny the allegations of Paragraph 110 of the Complaint.

111. Defendants deny the allegations of Paragraph 111 of the Complaint.

112. Defendants deny the allegations of Paragraph 112 of the Complaint.

113. Defendants deny the allegations of Paragraph 113 of the Complaint.

114. Defendants do not believe that a response to the allegations of Paragraph 114 is warranted or required. However, to the extent that a response to the allegations of Paragraph 114 is warranted or required, Defendants deny the allegations of Paragraph 114 of the Complaint.

115. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 115 of the Complaint and, therefore, deny the same.

116. Defendants deny the allegations of Paragraph 116 of the Complaint.

117. Defendants deny the allegations of Paragraph 117 of the Complaint.

118. Defendants deny the allegations of Paragraph 118 of the Complaint.

119. Defendants deny the allegations of Paragraph 119 of the Complaint.

120. Defendants deny the allegations of Paragraph 120 of the Complaint.

121. Defendants deny the allegations of Paragraph 121 of the Complaint.

122. Defendants deny the allegations of Paragraph 122 of the Complaint.

123. Defendants deny the allegations of Paragraph 123 of the Complaint.

124. Defendants deny the allegations of Paragraph 124 of the Complaint.

125. Defendants deny the allegations of Paragraph 125 of the Complaint.

126. Defendants deny the allegations of Paragraph 126 of the Complaint.

127. Defendants deny the allegations of Paragraph 127 of the Complaint.

128. Defendants deny the allegations of Paragraph 128 of the Complaint.

129. Defendants deny the allegations of Paragraph 129 of the Complaint.

130. Defendants deny the allegations of Paragraph 130 of the Complaint.

131. Defendants deny the allegations of Paragraph 131 of the Complaint.

**FIRST CAUSE OF ACTION**  
**Trademark Infringement**  
**(15 U.S.C. § 1114)**

132. In response to the allegations in Paragraph 132 of the Complaint, Defendants repeat their responses as if fully set forth herein.

133. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 133 of the Complaint and, therefore, deny the same.

134. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 134 of the Complaint and, therefore, deny the same.

135. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 135 of the Complaint and, therefore, deny the same.

136. Defendants deny the allegations of Paragraph 136 of the Complaint.

137. Defendants deny the allegations of Paragraph 137 of the Complaint.

138. Defendants deny the allegations of Paragraph 138 of the Complaint.

139. Defendants deny the allegations of Paragraph 139 of the Complaint.

140. Defendants deny the allegations of Paragraph 140 of the Complaint.

141. Defendants deny the allegations of Paragraph 141 of the Complaint.

142. Defendants deny the allegations of Paragraph 142 of the Complaint.

- 143. Defendants deny the allegations of Paragraph 143 of the Complaint.
- 144. Defendants deny the allegations of Paragraph 144 of the Complaint.
- 145. Defendants deny the allegations of Paragraph 145 of the Complaint.
- 146. Defendants deny the allegations of Paragraph 146 of the Complaint.
- 147. Defendants deny the allegations of Paragraph 147 of the Complaint.
- 148. Defendants deny the allegations of Paragraph 148 of the Complaint.
- 149. Defendants deny the allegations of Paragraph 149 of the Complaint.
- 150. Defendants deny the allegations of Paragraph 150 of the Complaint.
- 151. Defendants deny the allegations of Paragraph 151 of the Complaint.
- 152. Defendants deny the allegations of Paragraph 152 of the Complaint.
- 153. Defendants deny the allegations of Paragraph 153 of the Complaint.

**SECOND CAUSE OF ACTION**  
**Unfair Competition**  
**(15 U.S.C. § 1125(a))**

154. In response to the allegations in Paragraph 154 of the Complaint, Defendants repeat their responses as if fully set forth herein.

155. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 155 of the Complaint and, therefore, deny the same.

156. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 156 of the Complaint and, therefore, deny the same.

157. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 157 of the Complaint and, therefore, deny the same.

158. Defendants deny the allegations of Paragraph 158 of the Complaint.

159. Defendants deny the allegations of Paragraph 159 of the Complaint.

160. Defendants deny the allegations of Paragraph 160 of the Complaint.

161. Defendants deny the allegations of Paragraph 161 of the Complaint.

162. Defendants deny the allegations of Paragraph 162 of the Complaint.

163. Defendants deny the allegations of Paragraph 163 of the Complaint.

164. Defendants deny the allegations of Paragraph 164 of the Complaint.

165. Defendants deny the allegations of Paragraph 165 of the Complaint.

166. Defendants deny the allegations of Paragraph 166 of the Complaint.

167. Defendants deny the allegations of Paragraph 167 of the Complaint.

168. Defendants deny the allegations of Paragraph 168 of the Complaint.

169. Defendants deny the allegations of Paragraph 169 of the Complaint.

170. Defendants deny the allegations of Paragraph 170 of the Complaint.

171. Defendants deny the allegations of Paragraph 171 of the Complaint.

172. Defendants deny the allegations of Paragraph 172 of the Complaint.

173. Defendants deny the allegations of Paragraph 173 of the Complaint.

174. Defendants deny the allegations of Paragraph 174 of the Complaint.

175. Defendants deny the allegations of Paragraph 175 of the Complaint.

176. Defendants deny the allegations of Paragraph 176 of the Complaint.

**Third Cause of Action**  
**Trademark Dilution**  
**(15 U.S.C. § 1125(c))**

177. In response to the allegations in Paragraph 177 of the Complaint, Defendants repeat their responses as if fully set forth herein.

178. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 178 of the Complaint and, therefore, deny the same.

179. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 179 of the Complaint and, therefore, deny the same.

180. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 180 of the Complaint and, therefore, deny the same.

181. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 181 of the Complaint and, therefore, deny the same.

182. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 182 of the Complaint and, therefore, deny the same.

183. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 183 of the Complaint and, therefore, deny the same.

184. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 184 of the Complaint and, therefore, deny the same.

185. Defendants deny the allegations of Paragraph 185 of the Complaint.

186. Defendants deny the allegations of Paragraph 186 of the Complaint.

187. Defendants deny the allegations of Paragraph 187 of the Complaint.

188. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 188 of the Complaint and, therefore, deny the same.

189. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 189 of the Complaint and, therefore, deny the same.

190. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 190 of the Complaint and, therefore, deny the same.

191. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 191 of the Complaint and, therefore, deny the same.

192. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 192 of the Complaint and, therefore, deny the same.

193. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 193 of the Complaint and, therefore, deny the same.

194. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 194 of the Complaint and, therefore, deny the same.

195. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 195 of the Complaint and, therefore, deny the same.

196. Defendants deny the allegations of Paragraph 196 of the Complaint.

197. Defendants deny the allegations of Paragraph 197 of the Complaint.

198. Defendants deny the allegations of Paragraph 198 of the Complaint.

199. Defendants deny the allegations of Paragraph 199 of the Complaint.

200. Defendants deny the allegations of Paragraph 200 of the Complaint.

201. Defendants deny the allegations of Paragraph 201 of the Complaint.

202. Defendants deny the allegations of Paragraph 202 of the Complaint.

203. Defendants deny the allegations of Paragraph 203 of the Complaint.

204. Defendants deny the allegations of Paragraph 204 of the Complaint.

**FOURTH CAUSE OF ACTION**  
**Common Law Trademark Infringement**

205. In response to the allegations in Paragraph 205 of the Complaint, Defendants repeat their responses as if fully set forth herein.

206. Defendants do not believe that a response to the allegations of Paragraph 206 is warranted or required. However, to the extent that a response to the allegations of Paragraph 206 is warranted or required, Defendants deny the allegations of Paragraph 206 of the Complaint.

207. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 207 of the Complaint and, therefore, deny the same.

208. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 208 of the Complaint and, therefore, deny the same.

209. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 209 of the Complaint and, therefore, deny the same.

210. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 210 of the Complaint and, therefore, deny the same.

211. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 211 of the Complaint and, therefore, deny the same.

212. Defendants deny the allegations of Paragraph 212 of the Complaint.

213. Defendants deny the allegations of Paragraph 213 of the Complaint.

214. Defendants deny the allegations of Paragraph 214 of the Complaint.

215. Defendants deny the allegations of Paragraph 215 of the Complaint.

216. Defendants deny the allegations of Paragraph 216 of the Complaint.

217. Defendants deny the allegations of Paragraph 217 of the Complaint.

218. Defendants deny the allegations of Paragraph 218 of the Complaint.

219. Defendants deny the allegations of Paragraph 219 of the Complaint.

220. Defendants deny the allegations of Paragraph 220 of the Complaint.

221. Defendants deny the allegations of Paragraph 221 of the Complaint.

222. Defendants deny the allegations of Paragraph 222 of the Complaint.

223. Defendants deny the allegations of Paragraph 223 of the Complaint.

224. Defendants deny the allegations of Paragraph 224 of the Complaint.



225. Defendants deny the allegations of Paragraph 225 of the Complaint.

226. Defendants deny the allegations of Paragraph 226 of the Complaint.

227. Defendants deny the allegations of Paragraph 227 of the Complaint.

228. Defendants deny the allegations of Paragraph 228 of the Complaint.

**FIFTH CAUSE OF ACTION**  
**Deceptive Trade Practices**  
**Utah Code Ann. § 13-11a-3**

229. In response to the allegations in Paragraph 229 of the Complaint, Defendants repeat their responses as if fully set forth herein.

230. Defendants do not believe that a response to the allegations of Paragraph 230 is warranted or required. However, to the extent that a response to the allegations of Paragraph 230 is warranted or required, Defendants deny the allegations of Paragraph 230 of the Complaint.

231. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 231 of the Complaint and, therefore, deny the same.

232. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 232 of the Complaint and, therefore, deny the same.

233. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 233 of the Complaint and, therefore, deny the same.

234. Defendants deny the allegations of Paragraph 234 of the Complaint.

235. Defendants deny the allegations of Paragraph 235 of the Complaint.

236. Defendants deny the allegations of Paragraph 236 of the Complaint.

237. Defendants deny the allegations of Paragraph 237 of the Complaint.

238. Defendants deny the allegations of Paragraph 238 of the Complaint.

239. Defendants deny the allegations of Paragraph 239 of the Complaint.

- 240. Defendants deny the allegations of Paragraph 240 of the Complaint.
- 241. Defendants deny the allegations of Paragraph 241 of the Complaint.
- 242. Defendants deny the allegations of Paragraph 242 of the Complaint.
- 243. Defendants deny the allegations of Paragraph 243 of the Complaint.
- 244. Defendants deny the allegations of Paragraph 244 of the Complaint.
- 245. Defendants deny the allegations of Paragraph 245 of the Complaint.
- 246. Defendants deny the allegations of Paragraph 246 of the Complaint.
- 247. Defendants deny the allegations of Paragraph 247 of the Complaint.
- 248. Defendants deny the allegations of Paragraph 248 of the Complaint.
- 249. Defendants deny the allegations of Paragraph 249 of the Complaint.
- 250. Defendants deny the allegations of Paragraph 250 of the Complaint.

**SIXTH CAUSE OF ACTION**  
**Unfair Competition**  
**Utah Code Ann. § 13-5a-102**

251. In response to the allegations in Paragraph 251 of the Complaint, Defendants repeat their responses as if fully set forth herein.

252. Defendants do not believe that a response to the allegations of Paragraph 252 is warranted or required. However, to the extent that a response to the allegations of Paragraph 252 is warranted or required, Defendants deny the allegations of Paragraph 252 of the Complaint.

253. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 253 of the Complaint and, therefore, deny the same.

254. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 254 of the Complaint and, therefore, deny the same.

255. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 255 of the Complaint and, therefore, deny the same.

256. Defendants deny the allegations of Paragraph 256 of the Complaint.

257. Defendants deny the allegations of Paragraph 257 of the Complaint.

258. Defendants deny the allegations of Paragraph 258 of the Complaint.

259. Defendants deny the allegations of Paragraph 259 of the Complaint.

260. Defendants deny the allegations of Paragraph 260 of the Complaint.

261. Defendants deny the allegations of Paragraph 261 of the Complaint.

262. Defendants deny the allegations of Paragraph 262 of the Complaint.

263. Defendants deny the allegations of Paragraph 263 of the Complaint.

264. Defendants deny the allegations of Paragraph 264 of the Complaint.

265. Defendants deny the allegations of Paragraph 265 of the Complaint.

266. Defendants deny the allegations of Paragraph 266 of the Complaint.

267. Defendants deny the allegations of Paragraph 267 of the Complaint.

268. Defendants deny the allegations of Paragraph 268 of the Complaint.

269. Defendants deny the allegations of Paragraph 269 of the Complaint.

270. Defendants deny the allegations of Paragraph 270 of the Complaint.

271. Defendants deny the allegations of Paragraph 271 of the Complaint.

272. Defendants deny the allegations of Paragraph 272 of the Complaint.

273. Defendants deny the allegations of Paragraph 273 of the Complaint.

274. Defendants deny the allegations of Paragraph 274 of the Complaint.

**SEVENTH CAUSE OF ACTION**  
**Tortious Interference with Contract**

275. In response to the allegations in Paragraph 275 of the Complaint, Defendants repeat their responses as if fully set forth herein.

276. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 276 of the Complaint and, therefore, deny the same.

277. Defendants deny the allegations of Paragraph 277 of the Complaint.

278. Defendants deny the allegations of Paragraph 278 of the Complaint.

279. Defendants deny the allegations of Paragraph 279 of the Complaint.

280. Defendants deny the allegations of Paragraph 280 of the Complaint.

281. Defendants deny the allegations of Paragraph 281 of the Complaint.

282. Defendants deny the allegations of Paragraph 282 of the Complaint.

283. As for the Prayer for Relief, Defendants deny that Plaintiff is entitled to any relief requested therein by Plaintiff and accordingly deny same.

### **AFFIRMATIVE DEFENSES**

By and for their affirmative defenses, Defendants state as follows:

1. **First Affirmative Defense** – The Complaint fails to allege facts sufficient to state a claim upon which relief can be granted, including, but not limited to, failure to meet the standard of pleading set by the Supreme Court in *Ashcroft v. Iqbal*, 129 S. Ct. 1937 (2009), and *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007).

2. **Second Affirmative Defense** – Plaintiff’s claims are barred by the first sale doctrine.

3. **Third Affirmative Defense** – Plaintiff’s claims are barred because all alleged acts of advertising, marketing, promotion, offer for sale and/or sale by Defendants were in connection with genuine and authentic product manufactured and originating with Plaintiff and, therefore, Defendants cannot be liable for any acts of infringement or dilution of Plaintiff’s trademarks under the Lanham Act.

4. **Fourth Affirmative Defense** – Plaintiff’s claims are barred, in whole or in part, because the accused advertisements and products of Defendants are not materially different from those of Plaintiff.

5. **Fifth Affirmative Defense** – Plaintiff’s claims are barred, in whole or in part, because Plaintiff’s purported quality control is pretextual.

6. **Sixth Affirmative Defense** – Plaintiff’s claims are barred, in whole or in part, because Plaintiff’s motivation in asserting the claims in this lawsuit is to control the prices at which its products are advertised and sold on Amazon.com and/or other online marketplaces, and not quality control for the protection of consumers.

7. **Seventh Affirmative Defense** – There is no likelihood of confusion between Plaintiff’s purported trademarks, and the alleged trademarks utilized on the accused products advertised and sold by Defendants.

8. **Eighth Affirmative Defense** – Plaintiff’s trademark claims are barred because Defendants’ use of the asserted trademarks, if any, was used in a manner which is permissible and fair under the law.

9. **Ninth Affirmative Defense** – Plaintiff’s claims are barred, in whole or in part, by the doctrine(s) of unclean hands, acquiescence, estoppel, laches and/or waiver.

10. **Tenth Affirmative Defense** – Plaintiff’s alleged trademarks are invalid and/or unenforceable.

11. **Eleventh Affirmative Defense** – Plaintiff’s alleged trademarks have not acquired distinctiveness through secondary meaning, and are therefore unprotectable, invalid and/or unenforceable.

12. **Twelfth Affirmative Defense** – Plaintiff’s claims are barred, in whole or in part, because there has been no damage in any amount, manner or at all by reason of any act alleged against Defendants and the relief prayed for therefore cannot be granted.

13. **Thirteenth Affirmative Defense** – Plaintiff’s claims are barred, in whole or in part, by any applicable Statute of Limitations to any and all of the claims asserted by Plaintiffs against Defendants.

14. **Fourteenth Affirmative Defense** – Plaintiff’s claims are barred, in whole or in part, because any infringement, if any, was innocent.

15. **Fifteenth Affirmative Defense** – Plaintiff’s claims are barred, in whole or in part, because of a failure to mitigate damages, if such damages exist.

16. **Sixteenth Affirmative Defense** – Without admitting that the Complaint states a claim, any remedies are limited to the extent that there is sought an overlapping or duplicative recovery pursuant to the various claims against Defendants.

17. **Seventeenth Affirmative Defense** – Plaintiffs fails to state facts sufficient to permit recovery of attorneys' fees.

18. **Eighteenth Affirmative Defense** – Plaintiff's claims for injunctive relief are barred because Plaintiff cannot show that it will suffer irreparable harm.

19. **Nineteenth Affirmative Defense** – Plaintiff's claims are barred, in whole or in part, because Defendants acted in good faith.

20. **Twentieth Affirmative Defense** - Plaintiff's claims are barred, in whole or in part, because any infringement of Plaintiff's trademarks, if any, was without bad faith/willfulness.

21. **Twenty-First Affirmative Defense** – Plaintiff's claims are barred, in whole or in part, because Plaintiff lacks standing to bring suit against Defendants.

22. **Additional Affirmative Defenses** – Defendants reserve the right to amend the Answer and/or the foregoing Affirmative Defenses as additional information becomes available during the course of discovery or otherwise. All possible affirmative defenses may not have been alleged here insofar as sufficient facts were not available, after reasonable inquiry, upon the filing of Defendants' Answer. As such, Defendants may later amend the Answer to raise additional affirmative defenses, if warranted by subsequent investigation. By providing this Answer, Defendants do not waive or relinquish any present or potential affirmative defense.

**PRAYER FOR RELIEF**

WHEREFORE, Defendants prays for judgment as follows:

1. That Plaintiff's Complaint be dismissed with prejudice;
2. That judgment be entered in favor of Defendants, and against Plaintiff;
3. That Defendants be awarded its cost of suit and reasonable attorneys' fees incurred herein; and
4. For such other and further relief as this Court may deem just and proper.

Dated: July 26, 2019

Respectfully submitted,  
**SHUMWAY VAN**

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